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May 12, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 6, 2002

Case Number: VSO-0575

This Decision concerns the eligibility of XXXXX (hereinafter referred to as "the individual") to hold an access authorization (also called a security clearance). The local DOE security office determined that information in its possession created substantial doubt about the individual's eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 CFR Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual should be not be granted an access authorization.

Background

The individual is employed by a contractor that does work connected with the DOE, and her employer has requested that she have an access authorization. The local DOE security office issued a Notification Letter to the individual on August 6, 2002. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a clearance, based upon disqualifying criteria set forth in section 710.8, paragraphs (f), (k), and (l).

The Notification Letter states that the individual deliberately misrepresented, falsified or omitted significant information from a security form she submitted to DOE in August 2001. The information the individual omitted concerns the nature and extent of her marijuana use. The individual eventually disclosed the actual extent of her past marijuana use in a Personnel Security Interview (PSI) conducted in March 2002. The omission of significant information about her past drug use from the August 2001 security form raises a security concern under Criterion F. The Notification Letter also states that the individual's possession and use of marijuana, a controlled substance, from 1994 until 1999, raises a security concern under Criterion K.

In addition, the Notification Letter states that the individual's actions raise concerns that she engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable,

or trustworthy, or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation, or duress, which may cause her to act contrary to the best interests of the national security. The same actions described in the Notification Letter with respect to Criteria F and K give rise to the security concerns under Criterion L, i.e. the individual's initial lack of candor in disclosing the actual nature and extent of her past marijuana use to the local DOE security office.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as Hearing Officer in this case.

At the hearing that I convened, the DOE Counsel did not call any live witnesses, but chose instead to rely on the written record. The individual was not represented by counsel; she testified on her own behalf, and called four other witnesses: her current supervisor, and three friends who were acquainted with her personal life. The DOE submitted seven written exhibits, and the individual submitted three written exhibits.

Standard of Review

The applicable DOE regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 CFR § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in § 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 CFR Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 CFR § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince DOE that restoring his or her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." See, e.g., *Personnel Security Hearing* (Case No. VSO-0013), 24 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. The DOE regulations were amended in 2001 to state that

any doubt regarding an individual's eligibility for access authorization shall be resolved in favor of the national security. 10 CFR § 710.7(a). For the reasons discussed below, it is my opinion that the individual has not resolved the doubts raised in this case and therefore should not be granted access authorization.

Findings of Fact

The undisputed facts are simple and straightforward. The individual admits she gave a false answer to the question about past illegal drug use on the DOE security form she signed in August 2001, when stating she used marijuana one time. *See* August 2001 security form, DOE Exhibit 6 (answer to question 24). In the March 2002 PSI, the individual revealed that she had used marijuana more extensively, about "once a week," from 1994 until she gave it up in 1999. *See* PSI Transcript, DOE Exhibit 7, hereinafter cited as "*PSI Tr.*," at 13-21. These facts serve as the background for considering whether the individual has mitigated the security concerns arising from her illegal drug use, and from her failure to disclose initially the true extent of her drug use on the DOE security form she submitted in August 2001.

Testimony of the Witnesses

The Individual

At the hearing, the individual attempted to mitigate the concerns about her honesty. She claimed she was an honest person whose submission of false information to the DOE was an aberration. Hearing Transcript, hereinafter cited as "*Tr.*," at 33. The individual stated she understood what she did was wrong, that she was "very sorry," and "not proud" of her behavior. *Id.* at 10-11. She attributed her falsification of the August 2001 security form to an impulse: "I felt like I had so many strikes against me already with the questionnaire. I was going to have to answer yes to so many other things, such as a repossession, a bankruptcy, counseling, things along that line, that [not revealing the extent of her drug use] was one of things I guess I felt like I could have some control over." *Id.*

Six months after submitting the security form in August 2001, the individual admitted smoking marijuana about once a week for a five-year period, rather than one time as she previously indicated. *PSI Tr.* at 13-21. The individual could not explain why she waited six months to reveal the truth. *Tr.* at 37. The individual insisted that she did not intentionally conceal information from the DOE, but failed to disclose it initially because she was "not happy with what I did." *Id.* at 17. The individual stated that she realized "I had made a horrible mistake and that I had to be very honest at that point." *Id.* at 11. While she admitted her falsification was deliberate, she maintained it was not "premeditated." *Id.* at 29.

Under the DOE Counsel's probing cross-examination, the individual admitted that her decision to reveal the true extent of her past drug use was motivated by the realization that DOE would eventually discover it from examining her counseling records. The DOE Counsel asked, "Isn't it true that you did not come forward with your drug use until you realized that it was going to be detected by the Department of Energy?" She replied, "Yes, sir, that is true." *Id.* at 37-38. Nevertheless, the

individual maintained she is a very honest person, and her failure to reveal the truth on the August 2001 security questionnaire was “a grave mistake.” *Id.* at 33.

The individual also tried to mitigate the drug concern, by showing her marijuana use was confined to a troubled five-year period in her past, and that she has not used any illegal drug during the last four years. The individual maintained that problems in her marriage before 1999 affected her marijuana use. *Id.* at 24. According to the individual, she quit smoking marijuana for good before she and her husband reconciled in April 1999. *Id.* at 19-23. The individual testified that she has been happier with her marriage and family life since then. To corroborate the fact that she no longer uses illegal drugs, the individual submitted as one of her written exhibits the report of a drug screen she took in October 2002, which showed a negative result for all controlled substances.

The Individual’s Character Witnesses

The individual called four character witnesses. The first was the individual’s current supervisor, who testified that the individual was an excellent worker, professional, disciplined and trustworthy. To illustrate why she thought the individual could be trusted to safeguard classified information, the supervisor pointed out that the individual routinely handles confidential personnel records, and “never have we had any reason to think that [the individual] would disclose information to anyone.” *Id.* at 42. On cross-examination, the DOE Counsel asked the supervisor what she knew about the individual’s past use of illegal drugs. According to the supervisor, the individual told her she used marijuana for “six months to a year” while she and her husband were separated, and that it was the supervisor’s impression that the individual did not use it for any time beyond that short period. *Id.* at 43. When asked what she would think if “hypothetically” the individual had actually used an illegal drug for four or five years, not just six to twelve months, the supervisor said she would have to know the situation, and “why she didn’t tell me that.” *Id.* at 45. The supervisor said she would not like to learn that a current employee had falsified some documents. *Id.* at 48. But the supervisor stood by the individual, stating “It probably would not taint the way I feel about her.” *Id.* She emphasized that “the main thing to me now is the fact that [the individual’s] life has been clean for the last three or four or five years, and that’s what matters to me.” *Id.* The supervisor does not socialize with the individual outside the workplace.

The three final witnesses were social friends of the individual, and they each testified that they saw the individual often in home situations. None of the three had ever seen the individual smoke marijuana. However, all of them said they knew the individual used the drug several years ago during the period when she was briefly separated from her husband. One witness indicated that she had “a major falling out” with the individual over her drug use. *Id.* at 51. This witness did not know about the individual’s drug use before the separation, nor did she ever recall discussing it with the individual. *Id.* at 52. Nor did the second witness who knew the individual used marijuana during the separation know about any other drug use by the individual. *Id.* at 58. Likewise, the third witness testified that he only knew about the individual’s drug use during the separation. *Id.* at 61.

Analysis

There are two issues in this case: (1) whether the individual has mitigated the concerns arising from her marijuana use from 1994 until 1999, and (2) whether the individual has mitigated the concerns arising from her submission of false information about her past marijuana use on the August 2001 security questionnaire. As explained below, I find that the individual has mitigated the concerns about her past marijuana use, but failed to mitigate the concerns about her dishonesty.

Concerns about the Individual's Marijuana Use

Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. In this case, however, there is no evidence of any drug use by the individual after early 1999 when she reconciled with her husband. Moreover, several witnesses have corroborated the individual's testimony on this point, and it is further corroborated by a negative drug screen from October 2002. Based on my weighing and balancing the factors enumerated in 10 CFR § 710.7(c), I find the individual's drug use ended four years ago, that she is rehabilitated and reformed, and highly unlikely to use drugs in the future. Thus, I find that the individual has mitigated the concerns in the Notification Letter under Criterion K, and the concerns under Criterion L that relate to her past marijuana use.

Concerns about the Individual's Falsification

Conduct involving questionable judgment, untrustworthiness, lack of candor, or dishonesty could indicate that an individual may not properly safeguard classified information. The individual submitted false information about the nature and extent of her marijuana use on her August 2001 security questionnaire. The individual let the false information stand uncorrected for approximately six months, when she confessed the true extent of her past drug use in the March 2002 PSI. Although the individual's voluntary admission was admirable, the nobility of her gesture was undercut by the fact that she confessed the information when she feared getting caught in a lie when the DOE obtained her counseling records. The individual knew those records would reveal that her drug use was more extensive than the one time she claimed on the security questionnaire. Admitting her past falsehood to the DOE and accepting the consequences are important steps in the process of reformation. But it does not automatically mitigate the security concerns under Criteria F and L about this individual's honesty, reliability and trustworthiness, especially in light of her tainted motivation for admitting the falsification. It is only a subsequent pattern of honesty and responsible behavior that can abate the security concerns that arise from a prior pattern of dishonest behavior.

The individual's attempt to mitigate concerns about her honesty was further harmed by the revelation at the hearing that she had not told her supervisor the whole truth about her five year history of drug use. The individual may have been ashamed of her conduct, but her propensity to minimize what she told others about her past drug use shows me that even at the time of the hearing, the individual was still not being completely honest about an issue that is relevant to her eligibility for a clearance.

I therefore find that she has not shown a sufficient period of honesty to mitigate the concerns stemming from her prior pattern of dishonesty about a matter that goes to the heart of her eligibility for access authorization. *Compare Personnel Security Hearing* (Case No. VS0-0013), 25 DOE ¶82, 752 (1995) (13-month period subsequent to covering up use of illegal drugs did not constitute a sufficient pattern of honest behavior) *with Personnel Security Hearing* (Case No. VSO-0410), 28 DOE ¶ 82,786 (2001), *affirmed* (OSA March 21, 2001) (eight years of honest behavior was sufficient evidence that the individual had reformed).

Conclusion

Based on the entire record in this proceeding, I find that the individual has resolved the security concerns under 10 CFR § 710.8(k) and (l) raised by her use of marijuana from 1994 through early 1999. However, I also find that the individual has failed to resolve the security concerns under 10 CFR § 710.8(f) and (l) raised by her submission of false information regarding her past drug use on her August 2001 personnel security questionnaire. For the reasons explained in this Decision, I find the individual has failed to show that granting her access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual should not be granted access authorization. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 CFR § 710.28.

Thomas O. Mann
Hearing Officer
Office of Hearings and Appeals

Date: May 12, 2003